

IN RE: Phil Pardue)
Map 008-00-0, Parcel 147.00) Davidson County
Residential Property)
Tax Years 2005 & 2006)

Statement of the Case

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$28,200	\$300	\$28,500	\$7,125

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on July 20, 2006, at the Davidson County Property Assessor's Office; present at the hearing were Phil Pardue, the taxpayer who represented himself, and Mr. Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor.

Subject property consists of vacant land located at 3909 Baxter Road in Joelton, Tennessee.

The taxpayer, Mr. Pardue, contends that the property is worth \$24,000 based on the allegation that only ¼ of property is accessible, ¾ across deep and wide hollow. Metro Health Department allegedly told him this was not a buildable lot.¹

The assessor contends that the property should be valued at \$28,500. In support of this position, four sales were introduced and is marked as exhibit number 3 as part of the record in this cause.²

The germane issue is the value of the property as of January 1, 2005. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values

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¹ It should be noted that Mr. Pardue owns the adjacent lots which once were one large tract until he divided them.

² They were not adjusted for size or condition.

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$21,366 based upon the exhibits and testimony of the taxpayers. Mr. Poling stated that of this 3.53 acre tract of land the county believes 3 acres are prime real estate and .53 acres are woods. However, based on the topographical maps and testimony of the taxpayer, the administrative judge is of the opinion that only 2 acres are prime and the rest wooded. The parties also agreed that the shed is not a viable structure.

The presumption of correctness that attaches to the decision from the County Board of Equalization is just that, a rebuttable presumption that can be overcome by the taxpayers' presentation.³ To hold that it is a conclusive presumption would essentially eliminate the right of a Taxpayer to present evidence, that scenario is not contemplated by the Assessment Appeals Commission. In this case the administrative judge is of the opinion that the taxpayer has presented clear and convincing evidence as to valuation of the subject property.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn.App. 1981). In this case the Taxpayer has sustained that burden.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$21,366	\$ -0-	\$21,366	\$5,342

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code

³ While there is no case law directly on point several cases and Attorney General Opinions appear to stand for the proposition that: "If the Court finds that evidence is sufficient to rebut this presumption, the Court shall make a written finding. . . . *Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993) also "[a] court is not required to assume the existence of any fact that cannot be reasonably conceived." *Peay v. Nolan*, 157 Tenn. 222,235(1928), 1986 Tenn. AG LEXIS 64, 86-142, August 12, 1986. In administrative proceedings, the burden of proof ordinarily rests on the one seeking relief, benefits or privilege. *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn.App. 1981).

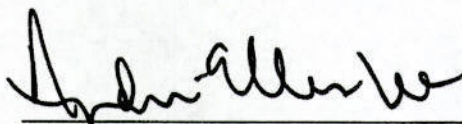
Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 22nd day of August, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Phil Pardue
Jo Ann North, Property Assessor